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SENATE BILL 296

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Dede Feldman

AN ACT

RELATING TO PROCUREMENT; REQUIRING DISCLOSURE OF CAMPAIGN
CONTRIBUTIONS BY PROSPECTIVE AND CURRENT STATE AND LOCAL
CONTRACTORS; PROVIDING FOR ON-LINE ACCESS OF DISCLOSURE
STATEMENTS; REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of Chapter 13, Article 1 NMSA
1978 is enacted to read:

"[NEW MATERIAL] STATE AND LOCAL CONTRACTS--CAMPAIGN
CONTRIBUTION DISCLOSURE AND PROHIBITION.--

A. A prospective state contractor shall disclose
all campaign contributions given by a principal of the
prospective state contractor to a state public officer during
the two years prior to the date the prospective state
contractor responds to a solicitation by a state agency to

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1 enter into a state contract if the aggregate total of
2 contributions from a principal to a public officer exceeds two
3 hundred fifty dollars (\$250) over the two-year period.

4 B. A prospective local contractor shall disclose
5 all campaign contributions given by a principal of the
6 prospective local contractor to a local public officer during
7 the two years prior to the date the prospective local
8 contractor responds to a solicitation by a local public body to
9 enter into a contract with the local public body if the
10 aggregate total of contributions from the principal to a local
11 public officer exceeds two hundred fifty dollars (\$250) over
12 the two-year period.

13 C. The disclosure shall indicate the date, the
14 amount and the nature of the contribution and the person
15 receiving the contribution. The disclosure statement shall be
16 on a form developed and made available on-line by the
17 department of finance and administration. Prospective state
18 and local contractors shall complete the disclosure statement
19 on-line, and the department shall post the disclosure
20 statements on the department's web site.

21 D. A prospective contractor not required to file a
22 disclosure statement pursuant to Subsection A or B of this
23 section shall file a statement affirming that no principal of
24 the prospective contractor made contributions to a relevant
25 public officer in excess of two hundred fifty dollars (\$250)

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1 over the two-year period.

2 E. If a principal of a state contractor gives a
3 campaign contribution to or solicits a campaign contribution
4 for the benefit of a state public officer or if a principal of
5 a local contractor does so for the benefit of a local public
6 officer during the pendency of the procurement process or term
7 of the respective state contract or local contract, the
8 respective state or local contractor shall file an updated
9 disclosure statement with the department of finance and
10 administration within thirty days of the contribution or
11 solicitation.

12 F. A solicitation for or proposed award of a
13 contract may be canceled or a contract that is executed may be
14 ratified or terminated if it is in the best interests of the
15 state or local public body when a prospective state or local
16 contractor or a state or local contractor fails to submit a
17 fully completed disclosure statement pursuant to this section.

18 G. As used in this section:

19 (1) "local public body" means the governing
20 authority of a political subdivision of the state;

21 (2) "local contractor" means a person,
22 business entity or nonprofit organization that enters into a
23 local contract, which shall be deemed to be a local contractor
24 until the termination of the contract. "Local contractor" does
25 not include a municipality or any other political subdivision

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1 of the state or an employee in the executive, legislative or
2 judicial branch of state government, political subdivision of
3 the state or an instrumentality of the state, whether full- or
4 part-time, in that person's capacity as an employee of the
5 state, a political subdivision of the state or an
6 instrumentality of the state;

7 (3) "local public officer" means a person
8 elected to an office, or a person appointed to complete a term
9 of an elected office, in the political subdivision of the state
10 where the local public body is seeking to contract with a local
11 contractor;

12 (4) "pendency of the procurement process"
13 means the time period commencing on the day of the initial
14 solicitation for a state or local contract by the state agency
15 or local public body and ending with the award of the contract
16 or the cancellation of the solicitation;

17 (5) "principal of a prospective state or local
18 contractor" means:

19 (a) a person who is a member of the
20 board of directors of, or has an ownership interest in, a
21 prospective state or local contractor that is a business
22 entity, except for an individual who owns less than five
23 percent of the shares of that prospective state or local
24 contractor that is a publicly traded corporation;

25 (b) a person who is employed by a

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1 prospective state or local contractor that is a business
2 entity, as president, treasurer or executive or senior vice
3 president;

4 (c) a person who is the chief executive
5 officer of a prospective state or local contractor that is not
6 a business entity;

7 (d) an employee of any prospective state
8 or local contractor who has managerial or discretionary
9 responsibilities with respect to a state or local contract;

10 (e) the spouse or a dependent child of a
11 person described in this paragraph;

12 (f) a candidate committee or political
13 committee established by or on behalf of a person described in
14 this paragraph; or

15 (g) a person who is compensated to seek
16 or lobby for state or local public body contracts by a
17 prospective state or local contractor;

18 (6) "prospective state or local contractor"
19 means a person, business entity or nonprofit organization that
20 submits a bid in response to a bid solicitation by the state, a
21 state agency, a local public body or an instrumentality of the
22 state, or a proposal in response to a request for proposals or
23 other solicitation by the state, a state agency, local public
24 body or an instrumentality of the state, until the contract has
25 been entered into. "Prospective state or local contractor"

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1 does not include a municipality or any other political
2 subdivision of the state or an employee in the executive,
3 legislative or judicial branch of state government, political
4 subdivision of the state or instrumentality of the state,
5 whether full- or part-time, in such person's capacity as an
6 employee of the state, a political subdivision of the state or
7 an instrumentality of the state;

8 (7) "state agency" means an office,
9 department, board, council, commission, institution or other
10 agency in the executive or legislative branch of state
11 government or an instrumentality of the state;

12 (8) "state contract" or "local contract" means
13 an agreement or contract with the state or any state agency or
14 instrumentality of the state, or local public body in the case
15 of a local contract, having a value of fifty thousand dollars
16 (\$50,000) or more, or a combination or series of such
17 agreements or contracts having a value of fifty thousand
18 dollars (\$50,000) or more in a fiscal year, for:

19 (a) the rendition of services, including
20 professional services;

21 (b) the furnishing of any material,
22 supplies or equipment;

23 (c) the construction, alteration or
24 repair of any public building or public work;

25 (d) the acquisition, sale or lease of

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1 any land or building;

2 (e) a licensing arrangement; or

3 (f) a grant, loan or loan guarantee;

4 (9) "state contractor" means a person,
5 business entity or nonprofit organization that enters into a
6 state contract, which shall be deemed to be a state contractor
7 until the termination of the contract. "State contractor" does
8 not include a municipality or any other political subdivision
9 of the state or an employee in the executive, legislative or
10 judicial branch of state government or an instrumentality of
11 the state, whether full- or part-time, in that person's
12 capacity as an employee of the state or instrumentality of the
13 state; and

14 (10) "state public officer" means a person
15 elected to an office or a person appointed to complete a term
16 of an elected office, in the executive or legislative branch of
17 state government, a political committee established or
18 controlled by or affiliated with a state public officer and any
19 department secretary in the executive branch having an active
20 candidate committee or political committee account."

21 Section 2. REPEAL.--Section 13-1-191.1 NMSA 1978 (being
22 Laws 2006, Chapter 81, Section 1, as amended) is repealed.